

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

AMERICAN BIO MEDICA CORPORATION,

Plaintiff;

-against-

TODD BAILEY,

Defendant.

Civil Action No.:

1:17-cv-00302-TJM-DJS

AMENDED REPLY

Plaintiff, AMERICAN BIO MEDICA CORPORATION, by and through its attorney, as and for an Answer/Reply to the Complaint filed in Civil Action No. 1:18-cv-01447—intended to serve as a counterclaim in the present matter—states the following:

1. The plaintiff admits each and every allegation contained in the paragraphs of the Complaint marked or numbered 2, 3, 4, 5, 7, 23, 28, 30, and 45.
2. The plaintiff denies each and every allegation contained in the paragraphs of the Complaint marked or numbered 8, 10, 16, 17, 20, 21, 24, 25, 26, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 46, 47, and 48.
3. The plaintiff denies knowledge sufficient to form a belief as to the truth or falsehood of the allegations contained in the paragraphs of the Complaint marked or numbered 1, 6, 19, 29, and 49.
4. With regard to the allegations contained in the paragraphs of the Complaint marked or numbered 22, 27, 38, and 44, which incorporate by reference the allegations in certain prior paragraphs, the plaintiff begs leave to the disposition of the same as herein provided.

5. With regard to the allegation contained in the paragraph of the Complaint marked or numbered 9, the plaintiff admits that it terminated the defendant on December 23, 2018, but denies that the defendant made a demand for deferred compensation on that date, and denies that any sum of money is or was owed to the defendant.
6. With regard to the allegation contained in the paragraph of the Complaint marked or numbered 11, the plaintiff admits that it provided the defendant with an a list of deferred commissions, and admits that the defendant requested further detail, but denies that such commissions were or are owed to the defendant.
7. With regard to the allegation contained in the paragraph of the Complaint marked or numbered 12, the plaintiff admits to providing a spreadsheet to the defendant, but denies that such action constituted an acknowledgment or confirmation as alleged.
8. With regard to the allegation contained in the paragraph of the Complaint marked or numbered 13, the plaintiff admits to the receipt of a voice message and to a response by email, but denies that the message or response related to the timing of payments of the deferred commissions, as alleged.
9. With regard to the allegation contained in the paragraph of the Complaint marked or numbered 14, the plaintiff admits to the accuracy of the January 23, 2017 email correspondence contained in Exhibit C to the Complaint, but denies that such correspondence constituted a demand or request for the payment of the deferred commissions, as alleged.
10. With regard to the allegation contained in the paragraph of the Complaint marked or numbered 15, the plaintiff admits to providing a spreadsheet to the defendant, but denies

that the sums listed in that document were or are owed to the defendant.

11. With regard to the allegation contained in the paragraph of the Complaint marked or numbered 18, the plaintiff admits to receipt of such a request but denies that any sum is or was owed to the defendant.
12. The plaintiff denies any and all allegations contained in the Verified Answer not heretofore denied, or otherwise controverted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. The plaintiff's performance, under the contract or otherwise, was excused by the defendant's prior breach of the contract.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. The plaintiff's performance, under the contract or otherwise, was excused by the defendant's prior breach of the implied covenants of good faith and fair dealing.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. The plaintiff's performance, under the contract or otherwise, was excused by the faithless servant doctrine.

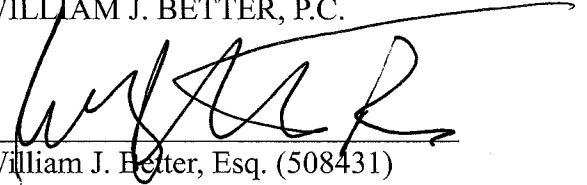
AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. The defendant's claims are barred by the equitable doctrines of waiver, estoppel, laches, and unclean hands.

WHEREFORE, it is respectfully requested that the defendant's Complaint/Counterclaims be dismissed.

Dated: February 11, 2019

WILLIAM J. BETTER, P.C.

A handwritten signature in black ink, appearing to read 'WJ Better', is written over a horizontal line.

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